REMARKS

Claims 1 and 10 have been amended and new Claim 23 has been added. As a result, Claims 1-7, 10-13, and 16-23 remain pending in the present application. Support for the amendments and new claim is found in the specification and claims as filed. Accordingly, the amendments and new claim do not constitute the addition of new matter. Reconsideration of the application in view of the foregoing amendments and following comments is respectfully requested.

Rejection of Claims 1-7 and 16-22 under 35 U.S.C. § 103(a)

The Examiner rejected Claims 1-7 and 16-22 under 35 U.S.C. § 103(a) as being unpatentable over Toshio et al. (60-058055) or Takaaki et al. or Kunihiko, or Lewis et al. and Greff.

Toshio et al. discloses a method for preventing discoloration of grated radish. Takaaki et al. discloses sheet-like food and preparation thereof. Kunihiko discloses processed food of grated yam. Lewis et al. discloses processed fresh herbs and method of making. Greff discloses preparation of fresh comminuted onions. None of the cited references disclose cabbage.

As amended Claim 1 recites "A vegetable juice comprising an unheated cabbage puree which does not have catalase activity, comprising at least one acid and having a pH of about 3 to about 3.7." Support for the amendment with regards to a cabbage puree can be found in the specification at page 6, line 21 and Examples 1-7.

According M.P.E.P. 2143.03, "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art."

None of the cited references, alone or in combination, teach or suggest a composition having all the claim limitations recited in Claim 1. None of the cited prior art references teach or suggest a vegetable juice comprising an unheated cabbage puree. In view of the foregoing, Applicants respectfully assert that Claim 1 is allowable over the cited art. All claims dependent on Claim 1, namely Claims 2-7, 16, 18-22, are also allowable.

Furthermore, according to M.P.E.P. 716.02(a), evidence of unobvious or unexpected advantageous properties, such as superiority in a property the claimed compound shares with the prior art, can rebut *prima facie* obviousness.

Without conceding to a case of *prima facie* obviousness, Applicants presented data that show evidence of unobvious or unexpected advantageous properties of the claimed invention in a Declaration under 37 C.F.R. § 1.132 that accompanied the Amendment filed on October 14, 2003. The Declaration is enclosed herein for convenience. The data presented in the Declaration shows the flavor and taste scores of cabbage are consistently superior above pH 2.90. As shown in the table in the Declaration, the taste scores for all of the products having a pH within the claimed range of about 3.0 to about 3.7 are 8 or above. In contrast, the taste scores for all of the products having a pH below the claimed range are lower. Additional data is shown in Table 1 of the specification on page 23. Consistent with the data in the Declaration, all of the taste scores for products within the claimed pH range are 8 or above. Moreover, this table shows that products having a pH above the claimed range all receive a lower taste score.

Nothing in the prior art would lead one of ordinary skill in the art to expect the high taste scores seen within the relatively narrow range recited in the presently pending claims. Thus, the results evidence a significant unexpected property of the claimed invention.

Moreover, Claim 1 has been amended to recite, *inter alia*, "[a] vegetable juice comprising an unheated cabbage puree," which is clearly commensurate with the data in the Declaration.

In the Office Action, the Examiner stated that "[n]othing unexpected is seen as in the Declaration, that the flavor and taste of a product is rated less and less, the lower the pH of a product, as very acid products are generally not acceptable." However, as Applicants are claiming a relatively low pH range, the applicability of this comment is not understood.

The Examiner also stated that "if the product has no catalase activity at a pH below 4, it would have been within the skill of the ordinary worker to add enough acid to make the product taste good, as this is only routine experimentation." However, it is Applicants' own discovery that catalase activity leads to poor taste. It appears that the Examiner has used the Applicants' own disclosure as a basis for concluding that the evidence in the Declaration was merely an expected result. The specification at page 6, lines 24-25 states that catalase activity can lessen

the flavor and taste of the product. The specification at page 3, line 21 to page 4, line 3 states "The present inventors carried out intensive research and found that when green vegetables are ground in the present of an acid, or when an acid is added immediately after grinding, inactivation of enzymes and bacteriostasis are sufficiently achieved without carrying out additional step of heating and the resulting raw puree satisfactorily retains the original flavor and taste, freshness and nutritional elements of the vegetables." This is Applicants' own discovery, not an expectation of those skilled in the art. Accordingly, the Declaration does indeed present unexpected results.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 1-7 and 16-22 under 35 U.S.C. § 103(a).

Rejection of Claims 10-13 under 35 U.S.C. § 103(a)

The Examiner rejected Claims 10-13 under 35 U.S.C. § 103(a) as being unpatentable over Toshio et al. (60-058055) or Takaaki et al. or Kunihiko, or Lewis et al. and Greff, and further in view of *Joy of Cooking* (Rombauer et al.), page 43. The Examiner also rejected Claims 10-13 under 35 U.S.C. § 103(a) as being unpatentable over Greff in view of *Joy of Cooking* (Rombauer et al.), page 43 and Lewis et al. None of the cited references disclose cabbage.

According to the Examiner, it would have been obvious to add ground onions as disclosed by Greff to a juice as disclosed by Rombauer et al. However, no *prima facie* showing of obviousness has been set forth with respect to the rejected claims, and the Declaration provides unexpected results that would rebut such a showing even if it were present.

As amended, Claim 10 recites "A process for preparing a vegetable juice comprising an unheated cabbage puree, the method comprising grinding the cabbage; adding an acid to the cabbage, thereby producing the puree; adding the puree to a liquid, thereby producing the vegetable juice."

According M.P.E.P. 2143.03, "[t]o establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art."

As with the case regarding the composition claims, none of the cited references, alone or in combination, teach or suggest a composition having all the claim limitations recited in Claim

10. None of the cited prior art references teach or suggest a vegetable juice comprising an unheated cabbage puree.

Additionally, the unexpectedly good taste scores are obtained for products made by a method of Claim 10. The unexpected results are shown in Table 1 of the specification on page 23, where Comparative Example 2 is a squeezed juice without adding acid. It can be seen that the products made by grinding with acid in accordance with Claim 10 exhibit markedly superior taste test scores. Nothing in the prior art would lead one of ordinary skill in the art to expect these results. Accordingly, the results are strong evidence of non-obviousness.

In view of the foregoing, Applicants respectfully assert that Claim 10 is allowable over the cited art. All claims dependent on Claim 10, namely Claims 11-13 and 17, are also allowable. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of Claims 10-13 under 35 U.S.C. § 103(a).

CONCLUSION

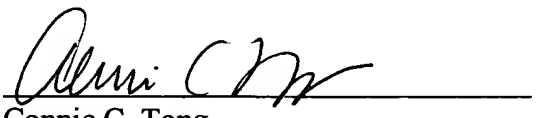
In view of the foregoing amendments and comments, it is respectfully submitted that the present application is fully in condition for allowance, and such action is earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the undersigned in order to resolve such issue promptly.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 6, 2004

By: 

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